

Applications Submitted by North Korean Nationals for Asylum or Refugee Status in the United States

October 1, 2004 – September 30, 2005

Introduction and Background

The following information is submitted pursuant to Section 305(a) of the North Korean Human Rights Act of 2004 (P.L. 108-333) (NKHRA), which requires the Secretaries of State and Homeland Security to submit a joint report to the appropriate congressional committees and the Committees on the Judiciary of the House of Representatives and the Senate on the operation of this title during the previous year, including the number of aliens who are nationals or citizens of North Korea who applied for political asylum or refugee status and the number who were granted such status. This report does not address North Korean nationals who may have sought asylum or refugee status in other countries. To better inform the Committees' review, this report also includes information submitted by the Executive Office for Immigration Review (EOIR) of the Department of Justice.

Asylum

Individuals physically present in the United States may seek protection from return to their countries of nationality through asylum procedures in one of two ways. Individuals who are not in removal proceedings may apply for asylum, regardless of their immigration status, by filing an application with United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security. Individuals who have been placed in removal proceedings before the EOIR may file for asylum with EOIR. Individuals in removal proceedings may also apply for withholding of removal or protection under the Convention Against Torture.

During Fiscal Year 2005, there were no applications for asylum filed by citizens of North Korea or granted by USCIS. There was one North Korean citizen who was included as a dependent on the application for asylum filed by a non-North Korean citizen. USCIS did not grant that application for asylum.

There were six North Korean asylum cases pending before EOIR at the beginning of Fiscal Year 2005. During the fiscal year, seven additional asylum applications were filed with EOIR by North Korean citizens. One North Korean was granted withholding of deportation but there were no grants of asylum by EOIR during Fiscal Year 2005.

Refugee Status

There were no applications for refugee admission to the United States filed by North Koreans during the reporting period.

The United States Refugee Admissions program operates in several formats, volumes, and locations around the world. Unlike our asylum procedures which require an applicant to be "physically present in the United States or (to) arrive in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)" (8 United States C. 1158), refugee admissions processing occurs outside of the United States on the territory of other states.

In most cases, foreign governments either welcome or do not object to United States refugee processing activity on their territory, as they believe resettlement in the United States is beneficial to the refugees in question. It often also serves as a welcome responsibility sharing mechanism since the country may be supporting other persons in need of international protection. Since 1975, the United States has worked cooperatively with governments worldwide to resettle in our country over 2.6 million refugees.

Some states, however, object to the United States conducting refugee resettlement activities. For example, such states may believe that, by introducing the possibility of resettlement in the United States or another developed country, economic migrants will be drawn to their territory further adding to the dependent population—the so-called "magnet effect." Or, the state of first asylum may be concerned that resettlement processing could upset domestic constituencies or a delicate political balance in the region.

The United States generally seeks permission to conduct refugee screening and, if objections are posed by the host government, is reluctant to risk endangering persons in need of protection. Although such host country concerns remain, United States refugee admission processing efforts are not pursued locally but

instead are focused on refugee populations elsewhere in the world. The United States seeks to avoid pursuing policies which, however well-intentioned, might lead to deterioration in the tolerance of a refugee population by a host government.

Since enactment of the North Korean Human Rights Act of 2004, agencies of the United States Government have engaged closely with states providing first asylum or which serve as transit or destination states for North Koreans. We have also held several consultations with field offices of the United Nations High Commissioner for Refugees (UNHCR) as well as its headquarters in Geneva.

In all of these discussions, we have emphasized the need for North Koreans outside of North Korea to be accorded protection from refoulement (forcible return) as required under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. To this end, we have strongly urged relevant states to accord UNHCR unimpeded access to North Korean asylum seekers, regardless of whether the country is a signatory to the Refugee Convention or Protocol. We have explored opportunities for the United States to support expanded assistance activities which benefit North Koreans. While emphasizing the important United States policy of "first do no harm" by avoiding actions that could disrupt existing arrangements that benefit North Koreans, we have also focused efforts on determining how United States resettlement might be used to enhance the protection of or otherwise improve conditions for North Koreans outside of North Korea.

To date, UNHCR and governments in the region continue to insist that these North Koreans are best served by the existing informal arrangements. According to UNHCR, the fact that North Koreans are able to obtain Republic of Korea (ROK) citizenship upon resettlement in the ROK precludes the need for a Refugee Status Determination (RSD) which is the normal precursor for refugees to be referred to third countries for resettlement consideration. Instead, as appropriate, UNHCR may facilitate the movement of North Koreans to the ROK. Last year, through these arrangements, some 1,900 North Koreans reached safety in the Republic of Korea. Given that their own bilateral relationships or other interests might be jeopardized, governments in the region have informed us that they do not wish to alter these arrangements. The messages from UNHCR and governments in the region have been quite clear on this point.

The United States does not require a UNHCR referral to conduct refugee screening. It can and does accept embassy or non-governmental referrals in appropriate cases. We are continuing to try to identify how best to use either of

these avenues for access so that the United States can facilitate access to the refugee program for North Koreans for whom resettlement to the United States is an appropriate solution.

CONCLUSION

Although present circumstances in the region are not favorable for the introduction of United States refugee resettlement processing for North Koreans, conditions could change, and we will seek opportunities to further such a climate. We do, however, need the cooperation of host governments. We will continue to relate to UNHCR and relevant governments United States willingness to be of assistance to North Korean groups or individual resettlement cases.